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In The

Supreme Court of the United States

October Term, 1980

HAVENS REALTY CORPORATION and
ROSE JONES,

Petitioners,

vs.

SYLVIA COLEMAN, R. KENT WILLIS and
HOUSING OPPORTUNITIES MADE EQUAL,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether Article III of the United States Constitution confers standing under the Fair Housing Act on a "tester" or on any other surrogate for persons directly injured by alleged discrimination, absent any allegation of injury to the tester or surrogate, which is the question this Court expressly left unanswered in *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979).

2. Whether Article III of the United States Constitution confers standing under the Fair Housing Act on a person who alleges that a defendant has deprived him of the benefits of interracial association but who fails to allege any facts supporting a logical nexus between the defendant's acts and that deprivation.

3. Whether Article III of the United States Constitution confers standing under the Fair Housing Act on an organizational plaintiff based solely on its general interest in equal housing opportunity and its efforts to achieve equal housing opportunity.

4. Whether a series of discrete acts constitutes a continuing violation which tolls the 180 day statute of limitation under the Fair Housing Act.

PARTIES IN THE COURT OF APPEALS

Paul Allen Coles, a plaintiff in the District Court, was listed in the caption of the Court of Appeals as plaintiff, but not as appellant. There were no issues with respect to him in the Court of Appeals and he has no interest in the outcome of this petition. All other parties are named in the caption of the case in this Court.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Virginia was not reported. The opinion of the Fourth Circuit Court of Appeals has not yet been reported. Both opinions are contained in the Appendix to this petition.

JURISDICTION

The Fourth Circuit Court of Appeals entered judgment on September 18, 1980. This petition for certiorari was filed within 90 days of that date.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

THE STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED[1]

United States Constitution, Article III, Section 2, Clause 1:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a Party; —to Controversies between two or more States; —between a State and Citizens of another State; —between Citizens of different States, —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

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[1] Complete texts of additional authorities cited in this petition are set forth in the Appendix.

42 U.S.C. § 3604:

§ 3604. Discrimination in the sale or rental of housing

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

42 U.S.C. § 3612:

§ 3612. Enforcement by private persons

(a) Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending

conciliation efforts; prior bona fide transactions unaffected by court orders

The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary of a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

(b) Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security

Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) Injunctive relief and damages; limitation; court costs; attorney fees

The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided,* That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

STATEMENT OF THE CASE

This case arose from the alleged practices of Havens Realty Corporation (Havens) and one of its employees, Rose Jones (Jones), in Henrico County, Virginia, a suburb of Richmond, Virginia. Havens is a Virginia corporation with its principal place of business at two apartment complexes, Camelot Townhouse Apartments (Camelot) and Colonial Court Apartments (Colonial Court), which are located directly across the street from each other. They are owned and managed by Havens.

On January 9, 1979, Paul Allen Coles (Coles), Sylvia Coleman (Coleman), R. Kent Willis (Willis), and Housing Opportunities Made Equal (HOME) filed an action in the United States District Court for the Eastern District of Virginia, Richmond Division, alleging that the defendants had engaged in the practice of racial steering of prospective apartment renters, in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1982, and the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.* (the Fair Housing Act). The district court's jurisdiction was based on 42 U.S.C. § 3612(a) and 28 U.S.C. §§ 1331, 1337, 1343(4) and 2201. The complaint sought declaratory and injunctive relief, compensatory and punitive damages, and costs and

attorneys' fees. The individual plaintiffs purported to represent a class composed of all persons who have rented or sought to rent property in Henrico County, Virginia, and who have been or continue to be, adversely affected by the acts, policies, and practices of Havens and Jones.

The complaint, which is included in the Appendix (App. 27), characterizes Coles, a black man, as a "renter plaintiff." The expression "renter plaintiff" means that Coles sought housing information from Havens and was ready, willing, and able to sign an apartment lease with Havens. This concept of "renter plaintiff" contrasts with the characterization of the other two individual plaintiffs, Coleman and Willis, as "tester plaintiffs." Coleman, a black woman, and Willis, a white man, were not actually seeking housing information for their own purposes, nor were they ready, willing and able to execute a lease. Instead, as the complaint alleges, they "consulted [Havens and Jones] with regard to available rentals in the course of their employment with Housing Opportunities Made Equal to determine whether or not [Havens and Jones] have practiced racial steering in the rental housing market" (App. 29).

The organizational plaintiff, HOME, is a Virginia nonprofit corporation, with its principal place of business in Richmond, Virginia. HOME's purpose, the complaint states, is "to make equal opportunity in housing a reality in the Richmond Metropolitan Area" (App. 29). The complaint alleges that HOME has a multi-racial membership of approximately 600 people, but it fails to allege where any of its members reside or any additional facts concerning HOME's membership. HOME's goal are alleged to include the elimination of unlawful racially discriminatory housing practices that cause injury to its members, to all persons who seek apartment units in the Richmond Metropolitan Area

and to all persons who reside in the Richmond Metropolitan Area (App. 29). It is alleged that HOME seeks to assure all such persons the right to the important social, professional, business, economic and political benefits of interracial associations that arise from living in integrated communities (App. 29-30). Finally, the complaint states that HOME's activities include: (1) seeking to assist and aid individuals of all races in obtaining housing in the Richmond Metropolitan Area through the operation of a housing counseling service, (2) investigation of allegations of discrimination and the referral of complaints to appropriate state and federal agencies, and (3) independent investigations of real estate brokers located in the Richmond Metropolitan Area (App. 30).

The complaint makes both general and specific allegations against the defendants. The complaint alleges generally that the defendants treat differently white and nonwhite prospective lessees on the basis of race by consistently showing white customers rental units in buildings occupied primarily by white tenants, by failing to show such units to black customers, and by showing black customers units in buildings occupied primarily by black tenants. More specifically, the complaint identifies five distinct instances of alleged steering by the defendants. The only instance involving the renter plaintiff, Coles, occurred on July 13, 1978, or 180 days prior to the filing of the complaint. All other instances involved either non-party testers or the tester plaintiffs, Coleman and Willis, and all of these occurred more than 180 days prior to the filing of the complaint.

On January 31, 1979, the defendants filed a motion to dismiss stating, among other things, that (1) all claims asserted under the Fair Housing Act were time barred and

should be dismissed, except the claim arising on July 13, 1978, and that (2) HOME, Coleman, and Willis lacked standing to assert claims under the Fair Housing Act of 1968 and the Civil Rights Act of 1866. On February 16, 1979, the district court sustained the defendants' motion to dismiss on both grounds (App. 21). A timely notice of appeal was filed by HOME, Coleman and Willis.

On September 18, 1980, the Fourt Circuit reversed the decision of the district court. The Court of Appeals held that Coleman's and Willis' mere status as testers was sufficient to confer standing under the Fair Housing Act. The Court of Appeals further held, in the alternative, that Coleman and Willis had standing in their individual capacity (as opposed to their capacity as testers) because they had alleged specific injury by averring that the defendants' conduct had deprived them of the right to "important social, professional, business and economic, political and aesthetic benefits of interracial association that arise from living in integrated communities free from discriminatory housing practices. . . ." (App. 33). The Fourth Circuit found that this allegation alone was sufficient to confer standing, even though the court acknowledged, "[t]he complaint in the instant case does not specifically allege that the discrimination practiced [by Havens] affect [sic] the area where the testers reside" (App. 17). In so holding, the Court of Appeals expressly declined to formulate any general rule circumscribing standing for tester plaintiffs (App. 10).

In practical effect, the Fourth Circuit's holding concerning the standing of Coleman and Willis gives standing to them both in their status as individual residents of the entire Richmond Metropolitan Area (an area undefined in the complaint) and in their status as testers, regardless of

whether or not they are residents of the Richmond Metropolitan Area.

With regard to the standing of HOME, the Court of Appeals held that, insofar as its members had been deprived of the same "community advantages" denied to Coleman and Willis by the actions of the defendants, HOME has representational standing to litigate these claims on behalf of its members, relying upon the requirements for representational standing set forth in *Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. 333 (1977) and *Warth* v. *Seldin*, 422 U.S. 490 (1975) (App. 14). The question of representational standing was neither briefed nor argued by HOME in the Fourth Circuit.

The Fourth Circuit also held that the complaint alleged sufficient injury to HOME as an entity to confer standing on it in its own right, in addition to its standing as the representative of its members. Here, the Fourth Circuit held that HOME had standing because it had been frustrated in its efforts to assist equal access to housing through its counseling and referral services, and because it had devoted significant resources to identifying and counteracting the defendants' discriminatory steering practices (App. 15). The Court of Appeals held that HOME's interest was more than the protestations of general interest found to be insufficient for standing in *Sierra Club* v. *Morton*, 405 U.S. 727 (1972) and *Warth* v. *Seldin, supra*, although less than the injury suffered by the non-profit developer in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). In so doing, the Fourth Circuit stated that HOME's goals were "functional," and that its "projects" provided " 'the essential dimension of specificity' that informs judicial decision making," as described in *Arlington Heights* (App. 15-16). However, the Fourth

Circuit failed to offer any reasons to justify its conclusion that HOME had more than the generalized interest that was insufficient to confer standing in *Sierra Club* v. *Morton* and *Warth* v. *Seldin*.

With regard to the statute of limitations, the Fourth Circuit held that the plaintiffs could base their Fair Housing Act claims upon acts occurring outside the applicable 180 day limitation period because the complaint alleged that the actions of the defendants constituted a continuing violation. Thus, the Court of Appeals held that the 180 day limitation period commenced to run with the last act alleged in the complaint and if that act occurred within the limitation period, which it did, none of the other alleged acts are time barred. The Court of Appeals based this conclusion on the general proposition that the primary focus of the statute is not on isolated instances of discrimination, but rather on the generalized practice of housing discrimination.

REASONS FOR GRANTING THE WRIT

The Decision Of The Court Of Appeals That Tester Status Alone Confers Standing Under The Fair Housing Act Involves An Important Question Of Federal Constitutional Law Expressly Left Unanswered in *Gladstone, Realtors* v. *Village of Bellwood.*

The Fourth Circuit held that the individual plaintiffs, Coleman and Willis, have standing to bring an action under the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, solely in in their capacity as "testers," which the Fourth Circuit defined as persons who "contacted defendants concerning the availability of rental apartments in the course of their employment with HOME to determine whether defendants were practicing racial steering" (App. 4). In *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979), although the plaintiffs were testers, they did not assert standing as testers in this Court. Therefore, this Court did not reach that question. *Id.* at 111. The Court of Appeals based its holding on the important public policy goals which the Fair Housing Act was designed to achieve (App. 8). While admitting that the testers serve as nothing more than "surrogates" for persons "illegally denied housing" by violations of the Fair Housing Act (App. 10), the Court of Appeals held that the testers had standing in the absence of any allegations concerning the nature, or even the existence of their injury. Thus, what the Fourth Circuit has held is that anyone who tests the compliance of another person with the Fair Housing Act has standing to commence an action and seek redress for the alleged violation, without regard to the nature, cause, or even existence, of their injury, and without pleading any facts supporting the nexus between tester status, the acts of the defendant, and the injury. In effect, as a result of the Fourth Circuit's decision, a pleading that alleges that a plaintiff tested a defendant and that the de-

fendant failed the test is sufficient for a trial on the merits, notwithstanding that the pleading failed to allege any facts relating the unlawful acts to the injury. All that a tester must plead is the conclusion that the unlawful act occurred. For example, had Coleman and Willis resided in Chicago, Illinois, and tested the defendants in this case, they would have had standing, according to the Fourth Circuit, and would have been able to compel a trial on the merits. Stripped of all rhetorical flourishes, a tester, according to the Fourth Circuit, does not have to plead or prove any facts concerning injury.

The Fourth Circuit seeks to justify its holding that tester status alone confers Article III standing by citing *Pierson* v. *Ray*, 386 U.S. 547 (1967) and *Evers* v. *Dwyer*, 358 U.S. 202 (1958). In *Pierson*, black persons occupied the "whites only" section of a bus station to "test" the validity of a municipal ordinance requiring racial segregation. The black plaintiffs in *Evers* "tested" a similar ordinance by occupying the white section of a bus. This Court held in both cases that simply because the plaintiffs violated the ordinances in order to test their constitutionality does not deprive the plaintiffs of standing. The so-called "testers" in *Evers* and *Pierson* each suffered specific injury by being unlawfully deprived because of their race of the right to occupy certain public accommodations or conveyances. This Court ruled that Article III is satisfied when specific injury such as this is present, whether or not plaintiffs incurred the injury solely for the purpose of instituting litigation. The Fourth Circuit, however, inverted the analysis in *Pierson* and *Evers*, and held that, so long as a plaintiff takes action for the purpose of determining whether a law is being violated, standing is conferred, whether or not the plaintiff suffered any distinct and palpable injury at the hands of the defendant.

The approach of the Court of Appeals to this question is unsupported by prior authority. The standing limitations imposed by Article III of the United States Constitution require that a plaintiff assert a distinct and palable injury to himself, *Warth* v. *Seldin*, 422 U.S. 490, 501 (1975), that is likely to be redressed by the requested relief. *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976). In this case, plaintiffs did not allege any injury to themselves as testers, and the Fourth Circuit did not find any injury. These plaintiffs did not seek to exercise any rights of their own, as did the plaintiffs in *Pierson* and *Evers*, and do not allege injury to themselves as a result of the denial of the rights of others. Clearly, under familiar Article III principles, these plaintiffs do not have standing in their capacity as testers.

Although the standing of testers has been placed in issue in several cases, the question has been analyzed in those cases on the basis of the injury they alleged as persons deprived of the benefits of interracial association. *See, e.g., Village of Bellwood* v. *Gladstone Realtors*, 569 F.2d 1013 (7th Cir. 1978), *aff'd on other grounds, Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979); *Sherman Park Community Association* v. *Wauwatosa Realty Co.*, 486 F.Supp. 838 (E.D.Wis. 1980); *Village of Bellwood* v. *Dwayne Realty*, 482 F.Supp. 1321 (N.D.Ill. 1979). Prior to the decision of the Court of Appeals in the instant case, a court has never suggested that a tester has standing to vindicate the rights of others without regard to any personal injury having been sustained by the tester.

The Fourth Circuit's decision is wholly inconsistent with the case or controversy limitation of Article III and means that *any* person who chooses to do so may bring an action under the Fair Housing Act to vindicate the rights of others, whether or not that person has any connection whatsoever

to the person allegedly discriminated against, or the community or neighborhood affected by the alleged discriminatory housing practice. The extraordinary significance of the Court of Appeals' deviation from established law in the area of constitutional standing limitations mandates correction by this Court.

The Decision Of The Court Of Appeals With Respect To Standing Of Persons Who Allege That They Have Been Deprived Of The Benefits Of Interracial Association Raises Important Questions Concerning This Court's Decisions In *Trafficante* v. *Metropolitan Life Insurance Co.* and *Gladstone, Realtors* v. *Village Of Bellwood.*

The Court of Appeals found that the individual plaintiffs who allege that they have been deprived of the benefits of interracial association have standing under the Fair Housing Act. In this decision, the Court of Appeals went far beyond this Court's prior decisions concerning standing under the Fair Housing Act in *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979), and *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). The decision of the Court of Appeals effectively grants standing to anyone residing in a major metropolitan area who includes in his complaint the conclusory allegation that he is "deprived of the benefits of interracial association," whether or not there is a logical nexus between the defendants' acts and the deprivation. Thus, the decision of the Court of Appeals effectively eliminates as well the constitutional requirement that a plaintiff "must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the courts' intervention." *Warth* v. *Seldin*, 422 U.S. 490, 508 (1975) (emphasis in original).

The individual plaintiffs in this case allege only that they

are residents of the City of Richmond or the County of Henrico,[2] two contiguous political subdivisions with a population of nearly 400,000 people (App. 16). They also claim that defendants' alleged practice in two adjacent apartment complexes in Henrico County "contributes to maintaining existing neighborhood segregation and inhibits the development of stable racially integrated neighborhoods," apparently in the entire Richmond Metropolitan Area (App. 30-31), which presumably includes at least the City of Richmond, the County of Henrico and the County of Chesterfield, an area with a population of well over one-half million people.[3]

By contrast, in *Bellwood*, four residents of an integrated neighborhood allegedly "targeted" by defendant for racial steering were found to have standing because the defendant's conduct allegedly jeopardized their right to live in an integrated community. However, summary judgment was affirmed against two non-residents of the target neighborhood who alleged no facts to show how steering directed towards the target neighborhood affected the areas where they resided. *Bellwood*, 441 U.S. at 111 n. 25.

Also by contrast, in *Trafficante*, the plaintiffs were residents of the apartment complex that was the target of defendants' alleged discrimination. They had standing to challenge their landlord's discriminatory rental policies because those policies denied the plaintiffs the right to live in an integrated community. *Trafficante*, 409 U.S. at 206. In *Trafficante* it was reasonable to conclude from those facts

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[2] Although the Court of Appeals apparently believed that Coleman and Willis are residents of Henrico County (App. 11), the complaint merely alleges that the "individual plaintiffs. . . are all residents of the City of Richmond or Henrico County" (App. 29).

[3] The Richmond Standard Metropolitan Statistical Area is composed of eight political subdivisions with a combined area of over 2,000 square miles. Department of Commerce, Bureau of the Census, County and City Data Book (1977).

that actual injury occurred to the plaintiffs and would be redressed by cessation of the alleged discrimination because the plaintiffs resided in the apartment complex where the acts of discrimination occurred. *Trafficante* clearly did not hold, as the Fourth Circuit has here, that racial discrimination practiced by a landlord of an apartment complex could be challenged by all persons residing in an entire metropolitan area.

It is " 'an ingenious academic exercise in the conceivable' ", *Warth* v. *Seldin*, 422 U.S. at 509, quoting *United States* v. *S.C.R.A.P.*, 412 U.S. 669, 688 (1973), to conclude that everyone in the Richmond Metropolitan Area is harmed by alleged discriminatory practices at two adjacent apartment complexes in Henrico County or that the cessation of those practices will affect the racial composition of neighborhoods throughout the entire Richmond Metropolitan Area, and therefore affect every person residing in that metropolitan area. This conclusion of the Court of Appeals is clearly in conflict with this Court's decisions under Article III, which require the allegation of concrete and specific facts upon which standing is based.

This Court should grant certiorari to provide guidance to the lower courts on the scope of this Court's decisions in *Bellwood* and *Trafficante*. Guidance is particularly necessary at this time because of the growing number of cases addressing the standing of persons asserting the rights of others under the Fair Housing Act,[4] as well as other statutes in which prudential standing limitations have been eliminated by Congress.

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[4] *See, e.g., Sherman Park Community Association* v. *Wauwatosa Realty Co.*, 486 F.Supp. 838 (E.D. Wis. 1980); *Fair Housing Council of Bergen County, Inc.* v. *Eastern Bergen County Multiple Listing Service, Inc.*, 422 F.Supp. 1071 (D.N.J. 1976).

The Decisions Of The Fourth And Seventh Circuits Conflict Concerning An Organizational Plaintiff's Standing Under The Fair Housing Act.

The Court of Appeals also found that HOME, an organization concerned with the elimination of racially discriminatory housing practices in the Richmond Metropolitan Area, has standing under the Fair Housing Act, both as a representative of its members and on the basis of its own alleged injury. HOME alleges injury to itself and its members in the following language:

> Plaintiff HOME has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendant's [sic] racially discriminatory steering practices. HOME members have, as a result of defendants' practices, been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices in violation of the Fair Housing Act of 1968, 42 U.S.C. §3601, *et seq.*

(App. 33-34)

The Fourth Circuit's decision that HOME has standing based on these allegations is in direct conflict with the Court of Appeals for the Seventh Circuit in *Village of Bellwood* v. *Gladstone Realtors*, 569 F.2d 1013 (7th Cir. 1978), *aff'd on other grounds, Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979).

One of the plaintiffs in *Bellwood* was the Leadership Council for Metropolitan Open Communities. Like HOME, the Leadership Council is a non-profit corporation devoted to eliminating housing discrimination in a major metropolitan area and, like HOME, it alleged that racial steering

hampers and interferes with its work and purpose and costs it money to investigate and to attempt to eliminate such practices. *Id.* at 1015. The Seventh Circuit had no difficulty in holding that the Leadership Council lacked standing:

> [T]he Council's interest in open housing matters and its asserted commitment to effectuating that interest, albeit commendable, do not substitute for the concrete injury constitutionally required to invoke the jurisdiction of the federal courts. The alleged dollar cost to the Council of attacking defendants' alleged practices is simply "concomitant to [its] keen concern" about open housing issues, and does not present independently cognizable injury.

Id. at 1017 (citations omitted). The Seventh Circuit denied standing under the Fair Housing Act on the ground that an organizational plaintiff, like an individual plaintiff, must assert more than a mere interest in a social problem and an effort to further that interest. *Sierra Club* v. *Morton*, 405 U.S. 727 (1972). Thus, on nearly identical allegations of injury, the Seventh Circuit denied standing to the Leadership Council while the Fourth Circuit granted standing to HOME.

Lower courts are also in conflict on this issue. In *Heights Community Congress* v. *Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D.Ohio 1975), the district court found that a similar organization had standing based on allegations that the organization's purpose is "the promotion and maintenance of Cleveland Heights as an open and integrated community," *id.* at 2, and that " 'the conduct of the defendant directly obstructs, frustrates and damages the congress in achieving its objective by impeding the processes which are used to benefit the entire community of Cleveland Heights.' " *Id.* at 4. By contrast, in *Fair Housing Council of Bergen County, Inc.* v. *Eastern Bergen County Multiple Listing Service,*

Inc., 422 F.Supp. 1071 (D.N.J. 1976), the district court held:

> Insofar as the Fair Housing Council seeks standing based on its special interest in eradicating discriminatory housing practices in Bergen County and its expenditure of monies towards that end, its complaint must fail.

Id. at 1083. *Accord, Village of Bellwood* v. *Dwayne Realty*, 482 F.Supp. 1321 (N.D.Ill. 1979).

As these and other cases indicate, the standing of local fair housing organizations is an important federal question on which federal courts conflict. Since this issue will continue to arise with increasing frequency, a writ of certiorari should issue to resolve this conflict and provide guidance to the lower federal courts.

The Court of Appeals also found that HOME has standing as a representative of its members, although the point was neither briefed nor argued by HOME. The Court of Appeals recognized that in order for an organization to have standing, its members must have standing in their own right, *Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. 333, 343 (1977); however, there is absolutely nothing in the complaint which indicates that any HOME member has standing. There is no connection whatsoever between the defendants' alleged practices and any HOME member. The complaint does not even allege that the members are residents of the Richmond Metropolitan Area, much less Camelot or Colonial Court apartments or the neighborhood surrounding them. Thus, the principles discussed earlier in this petition concerning standing of individuals who allege that they have been deprived of the benefits of interracial association apply with even greater force to the Court of Appeals' decision that HOME has standing

as a representative of its members. A writ of certiorari should issue to review this unwarranted disregard of the requirements of Article III.

The Decisions Of The Third And Fourth Circuits Conflict Concerning Whether The Limitation Period Under Section 812 Of The Fair Housing Act Applies When A Plaintiff Alleges Discrete Acts Of Discrimination.

The district court in this case held that the plaintiffs' action under the Fair Housing Act was barred by the limitation period of Section 812, 42 U.S.C. § 3612(a), insofar as that action was based on acts of discrimination occurring more than 180 days before the complaint was filed. The Court of Appeals reversed, holding that the alleged acts of the defendants amounted to a continuing violation and that, therefore, the plaintiffs' action could be based on events occurring outside of the 180 day limitation period.

Although a continuing violation of Title VII of the Civil Rights Act of 1968, 42 U.S.C. §§ 2000e *et seq.*, has been recognized as tolling the 180 day limitation period of that title, that rationale has never been recognized by this Court in Title VIII cases. In the context of Title VIII, the continuing violation theory is an unnecessary adjunct to the statutory scheme of remedies. If a pattern or practice of discrimination in violation of the Fair Housing Act is occurring, the Attorney General is empowered to bring an action for equitable relief under Section 813, 42 U.S.C. § 3613. The plaintiffs improperly attempt to assume the role of the Attorney General in this action under Section 812, a section designed for the vindication of private rights with respect to discrete violations.

Furthermore, the acts of discrimination allegedly committed by defendants are unitary acts, occurring at distinct and identifiable points in time. Since each act involved

deliberate testing by the individual plaintiffs or other employees of HOME (App. 31-33), these acts were known to the plaintiffs at the time they were committed and any cause of action arose then. Having failed to act on any claims which arose from these acts within the limitation period, the plaintiffs are barred with respect to these acts. Even if a continuing violation theory were appropriate under Title VIII, the plaintiffs clearly have alleged several discrete acts, not a continuing violation.

The question of what constitutes a continuing violation under the Fair Housing Act has arisen in several cases. In *Meyers* v. *Pennypack Woods Home Ownership Association,* 559 F.2d 894 (3d Cir. 1977), the Third Circuit did not find a continuing violation in the repeated refusal of the defendants to sell a home to the plaintiff. *Id.* at 899. Additionally, that court appeared to question whether or not the continuing violation rationale was appropriate under Title VIII. *Id.* The decision of the Fourth Circuit in the instant case is in conflict with the decision Third Circuit. Similarly, in *Stingley v. City of Lincoln Park,* 429 F.Supp. 1379 (E.D. Mich. 1977), the court held that there could not be a continuing violation where "an exact date can be determined on which the alleged discriminatory practice occurred," *id.* at 1391, stating:

> If there was validity to the argument that because the defendant still maintained its residency policy that there was a continuing discriminatory act, then the time limits of Title VII [sic] would become entirely meaningless. For example, in every case of employment discharge brought under Title VII, plaintiffs invariably plead a pattern and practice of discriminatory conduct. Since this pattern and practice arguably continues, the end result would be that a discharged employee would have forever to bring his complaint. Such was clearly

> not the intention of Congress in enacting the time limits that are contained in both Title VII and Title VIII. Similarly, as applied to the facts in this case, the argument advanced by the plaintiff would mean that there would be no limit in which they would have had to institute action.

Id. at 1391. Again, the Fourth Circuit is in conflict with the district court in *Stingley* in finding a continuing violation in discrete, identifiable acts of alleged discrimination.

In view of the conflict between the Third and Fourth Circuits, a writ of certiorari should issue to resolve this important question of federal statutory construction.

CONCLUSION

This case presents important questions of federal constitutional law involving standing under the Fair Housing Act, and federal statutory law involving the statute of limitations under Section 812, on which courts of appeals and district courts conflict. Review of the opinion and judgment of the Court of Appeals is timely, appropriate and necessary. This petition should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that six (6) copies of the foregoing Petition for Writ of Certiorari with Appendix have been served by mail on counsel for respondents, addressed as follows: three (3) copies to Daniel M. Singer, Theodore C. Hirt, Vanessa Ruiz and Dennis J. Riley, Fried, Frank, Harris, Shriver & Kampelman, 600 New Hampshire Avenue, N.W., Suite 1000, Washington, D. C. 20037, and three (3) copies to James F. Stutts, McSweeney, Stutts & Burtch, 121 Shockoe Slip, Richmond, Virginia 23219.

APPENDIX TO

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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1199

PAUL ALLEN COLES,

Plaintiff,

AND

SYLVIA COLEMAN, R. KENT WILLIS,
and on behalf of all other similarly situated,
and Housing Opportunities Made Equal,
a Virginia Corporation,

Appellants,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation, and Rose Jones,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Virginia. D. Dortch Warriner, District Judge.

Argued: January 10, 1980 Decided: September 18, 1980

Before FIELD, Senior Circuit Judge, HALL and SPROUSE, Circuit Judges.

Vanessa Ruiz (Daniel M. Singer, Theodore C. Hirt, Dennis J. Riley, Fried, Frank, Harris, Shriver & Kampelman; James F. Stutts, McSweeney and Stutts on brief) for Appellants; Richard W. Hogan (Linda L. Royster, Hirschler, Fleischer, Weinberg, Cox & Allen on brief) for Appellees.

SPROUSE, Circuit Judge:

This is an appeal from a final judgment of the district court granting defendants' motion to dismiss an action involving allegations of "racial steering" and racial discrimination in the rental of housing accommodations in the City of Richmond and Henrico County, Virginia. "Racial steering" is a practice by which real estate brokers and agents preserve and encourage patterns of racial segregation by steering members of racial and ethnic groups to buildings occupied primarily by members of their own racial or ethnic group and away from buildings and neighborhoods inhabited by members of other races or groups.

This suit was brought under the Fair Housing Act of 1968, 42 U.S.C. §§ 3601, 3604, 3612(a) (hereafter Fair Housing Act) and the Civil Rights Act of 1866, 42 U.S.C. § 1982. The district court dismissed all the claims except that of a single plaintiff, Paul Allen Coles. It held that the other claims were time-barred by the 180-day limitation period of the Fair Housing Act, and that the other plaintiffs lacked standing to assert discrimination claims under either statute. After a careful review of the law, we conclude that all plaintiffs have standing under the Fair Housing Act and that their claims are not time-barred. We therefore reverse and remand for further proceedings. We do not reach the questions of standing under 42 U.S.C. § 1982.

The corporate plaintiff in this action is Housing Oppor-

tunities Made Equal (HOME). HOME is a Virginia nonprofit corporation with about 600 members created for the purpose of eliminating unlawful, discriminatory housing practices, thereby seeking to make equal opportunity in housing a reality in the Richmond Metropolitan Area. HOME activities include: assisting individuals of all races in obtaining housing in the metropolitan area through the operation of a housing counseling service; investigating allegations of discrimination and referring complaints to appropriate federal and state authorities; conducting independent investigations of real estate brokers located in the metropolitan area to determine whether housing is being made available without regard to race; and taking appropriate steps to eliminate any racial discriminatory housing practices it may have found to exist.

The three individual plaintiffs, a "renter" and two "testers", reside in the City of Richmond or Henrico County. Paul Allen Coles, a black person, unsuccessfully sought to rent housing accommodations from the defendants. The two "tester" plaintiffs, Sylvia Coleman, a black person, and R. Kent Willis, a white person, contacted defendants in regard to the availability of rental apartments in the course of their employment with HOME to determine whether defendants were practicing racial steering. Corporate defendant is Havens Realty Corporation (Havens), which is in the business of providing real estate brokerage services for rental apartment units in Richmond. The remaining defendant is Rose Jones, a Havens employee.

The factual allegations in the complaint must be accepted as true in the present posture of the case.[1] So construed, the complaint reflects the following facts relevant to the disposition of this appeal.

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[1] *Warth* v. *Seldin*, 422 U.S. 490 (1975).

An unnamed black tester on March 14, 1978, inquired about rental vacancies at Havens and was told by Rose Jones that nothing was available. Later that day Willis, the white tester, asked about vacancies and was told by Jones that apartments were available at Colonial Court and Camelot Townhouse apartments. Colonial Court is integrated and Camelot Townhouse is predominately occupied by whites. A week later on March 21, 1978, black tester Sylvia Coleman asked generally about vacancies in apartments in Henrico County and was informed by one of defendant's employees that nothing was available, although the same day white tester R. Kent Willis was informed by Jones that there was an apartment at Colonial Court. Two days later, on March 23, 1978, black tester Coleman again asked Jones about vacancies and was told that nothing was available. White tester Willis was informed that day by Jones that an apartment was available at Colonial Court. On July 6, 1978, black tester Coleman asked specifically about Camelot Townhouse apartments and again received a negative response, but she was told about a vacancy at Colonial Apartments. That same day white tester John Barr, upon inquiry, was told an apartment was available at Camelot Townhouse apartments.

Coles visited defendant's offices on July 13, 1978, inquiring into the availability of apartments at Camelot Townhouses. He was informed there were no vacancies at Camelot but that an apartment was available in the adjoining integrated Colonial Court Apartment complex. The same day John Barr, a white tester, was informed by Rose Jones telephonically that an apartment was available at Camelot Townhouse—upon visiting the defendant's offices Barr was again informed that an apartment was available in the Camelot Townhouse.

The plaintiffs filed this action on January 9, 1979, individually and as a class action. The class included all persons who have rented or sought to rent residential property in Henrico County, Virginia, and who are adversely affected by the defendant's discriminatory acts, policies and practices. They seek declaratory and injunctive relief for the class, as well as an order requiring Havens to take various affirmative actions to overcome the effect of its past discriminatory actions. The individual plaintiffs in addition seek compensatory and punitive damages. HOME asks for its activity and litigation expenses.

Plaintiffs allege that the Richmond Metropolitan Area, including Henrico County, is racially segregated in its housing patterns; that is, it contains identifiable "white" and "black" neighborhoods; that the defendants' practices of racial steering contribute to the maintenance of existing neighborhood segregation and inhibit the development of stable, racially integrated neighborhoods; that defendants treat white and non-white prospective lessees differently based on their race or color; that defendants have engaged in practices to the detriment and injury of the plaintiffs and other similarly situated persons by consistently showing only prospective white customers rental units in buildings occupied primarily by white tenants, by consistently refusing or failing to show black prospective customers rental units in buildings occupied primarily by white tenants, and, on occasion, by failing or refusing to show prospective black customers rental units in less racially segregated buildings.

The complaint alleges that tester plaintiff Coleman (because of his race) and white tester Willis have been denied the right to rent real property in Henrico County and therefore have been deprived of the advantages and con-

veniences they would have enjoyed from living in this area, namely the right to the important social, professional, business, economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices.

It is also alleged that all the members of the class have been deprived of the right to the important social, professional, business, economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices, in violation of the Fair Housing Act.

The complaint alleges that HOME has had to devote significant resources to identify and counteract the defendant's racially discriminatory steering practices; and that HOME members have, as a result of defendants' practices, been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices in violation of the Fair Housing Act.

STANDING

All plaintiffs have standing. Willis and Coleman have standing as testers but, even if this were not so, they have alleged sufficient personal harm to give them standing. HOME has Article III standing both as a representative of its members and on the basis of its allegations of harm to the corporation.

I
TESTERS

The question of standing for testers under the Fair Housing Act was left unanswered by the Supreme Court in its

seminal pronouncement on Fair Housing Act standing in *Gladstone, Realtors* v. *Village of Bellwood,* 441 U.S. 91 (1979). The involvement of Willis and Coleman and their treatment by the defendants, however, presents strong public policy reasons for resolving that question in favor of Fair Housing Act standing for bona fide testers. The basic appropriateness of affording them standing to litigate todays issues of fair housing parallels the importance of the right to litigate the crucial issues decided in *Pierson* v. *Ray,* 386 U.S. 547 (1967) and *Evers* v. *Dwyer,* 358 U.S. 202 (1958). There are, of course, distinctions in the cases but the binding similarity is that they all treat the right of testers to challenge actions frustrating vital public policy where in most instances no other effective challenge could be mounted. The testers in *Pierson* actively sought integrated admission to the "whites only" section of the bus station; in *Evers* they occupied seats in the forbidden section of the bus. While the testers here only inquired about apartment rentals and did not apply to rent an apartment, their actions serve the same fundamental purposes as the testers in *Pierson* and *Evers.* Willis and Coleman purposefully approached the defendants as the first step in eradicating racial discrimination in housing, a social evil so antithetical to a free and democratic society that Congress has devised special and sharp tools for its excision. Housing, as a personal choice right of a citizen, is no less important than other rights affecting human dignity, such as unfettered access to public facilities. In *Evers* the Court wrote per curiam:

> A resident of a municipality who cannot use transportation facilities therein without being subjected by statute to special disabilities necessarily has, we think, a substantial, immediate, and real interest in the validity of

> the statute which imposes the disability. (Citation omitted). That the appellant may have boarded this particular bus for the purpose of instituting this litigation is not significant. (Citations omitted).

Id. at 204.

In *Pierson* a group of clergymen traveled to Jackson, Mississippi for the sole purpose of testing their rights to unsegregated public accommodations. The Court said, "[t]he petitioners had the right to use the waiting room of the Jackson bus terminal, and their deliberate exercise of that right in a peaceful, orderly, and inoffensive manner does not disqualify them from seeking damages under § 1983." 386 U.S. at 558 (footnote omitted).

In *Pierson* and *Evers* the court said in effect that since the plaintiffs were not representing injuries to third parties but rather to themselves there was no issue of prudential limitations. Here Willis and Coleman, in their capacity as employed testers, unquestionably assert the rights of third parties. As explained in *Warth*[2] however, Congress eliminated prudential considerations in Fair Housing Act cases, intending that standing be allowed as broadly as constitutionally permitted by Article III. *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 109 (1979); *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972).

The breadth of Congressional protection against housing discrimination is apparent from the language of Section 3604(d), 42 U.S.C. § 3604(d) which makes it unlawful "[t]o represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available." This prohibition against providing false

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[2] *Id.* at 509-10.

information creates a concomitant right to receive correct housing information without regard to race or color. Individuals illegally denied housing by subterfuge are, by the nature of the wrongful act, less able than others in our society to require enforcement of the Civil Rights Act through private litigation as "private attorneys general". There is no rational reason why their bona fide surrogates cannot pursue their cause. If the defendants had supplied the testers truthful information—that apartments were available both in Colonial Apartments and Camelot Townhouse Apartments—there would have been no injury and the social reform legislated by Congress would have been advanced without resort to the courts.

It is not necessary to formulate a general rule circumscribing standing for tester plaintiffs. Suffice it to say that they occupy a narrow island limited to areas fundamentally necessary for access to the federal courts as presented by *Pierson* and *Evers* or, as here, where Congress has recognized a similar deeply-grounded human right. The legislative design of the Fair Housing Act provides such broad standing for enforcement of the right. This is consistent with the *Trafficante* and *Bellwood* interpretation of the Fair Housing Act—maintaining the prophylactic quality of Article III limitations while recognizing the elasticity necessary to accommodate constitutional Congressional intent.

II

DIRECT INJURY TO "TESTERS"

Coleman and Willis also alleged violations of their right to enjoy the fruits of an integrated community in much the same language as the individual plaintiffs in *Trafficante* and *Bellwood*. This similarity gives weight to their status as bona fide "testers". These allegations, moreover, are

sufficient to grant standing for each of them as individual plaintiffs.

The Supreme Court in *Warth*, discussing an alleged violation of 42 U.S.C. § 1981, stated:

> We hold only that a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the courts' intervention. Absent the necessary allegations of demonstrable, particularized injury, there can be no confidence of "a real need to exercise the power of judicial review" or that relief can be framed "no broader than required by the precise facts to which the court's ruling would be applied."

Warth v. *Seldin*, 422 U.S. at 508.

The *Warth* opinion indicated a reservation as to whether the same ruling would have applied to a Fair Housing Act case.[3] *Trafficante* and *Bellwood* however decided standing under Fair Housing Act principles. Coleman and Willis both claim deprivation of community rights in language at least as specific as approved there. They are residents of Henrico County included within the Richmond Metropolitan area. They claim the practice of racial steering has adversely affected the area in which they live and that the defendants have engaged in racial steering. Black tester Coleman claims she has been denied the right to rent property and to make and enforce contracts for the lease of real estate in Henrico County by defendants' action; has been deprived of the advantages and conveniences she would have enjoyed from living in the area, and has been deprived of the right to the important social, professional, business, economic, political, and aesthetic benefits of in-

[3] *Id.* at 513 n. 21.

terracial associations that arise from living in integrated communities free from discriminatory housing practices. White tester Willis claims he has been deprived of the same rights afforded by integrated communities. Both Coleman and Willis claim they have been subjected to a "dual" housing market in Henrico County on the basis of race or color by defendants' practices.

Housing discrimination injuries are not inflicted so neatly that the wounded can always be identified as individuals, representatives of individuals, or members of a community. The Supreme Court's expressions on standing thus are not rigidly compartmentalized as governing exclusively those directly injured, testers, or members of the community.

In *Trafficante* v. *Metropolitan Life Insurance, Co.*, 409 U.S. 205, 208 (1972), one black and one white tenant of an apartment complex complained of discriminatory rental practices, alleging:

> (1) they had lost the social benefits of living in an integrated community; (2) they had missed business and professional advantages which would have accrued if they had lived with members of minority groups; (3) they had suffered embarrassment and economic damage in social, business, and professional activities from being "stigmatized" as residents of a "white ghetto". (Footnote omitted).

The Court held plaintiffs were persons "aggrieved" as defined in Section 810(a) of the Fair Housing Act, i.e., any person who claims to have been injured by a discriminatory housing practice. In this context Justice Douglas said:

> The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole

> community," 114 Cong. Rec. 2706, and as Senator Mondale who drafted § 810(a) said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living patterns."

Id. at 211.

In *Bellwood* four white plaintiffs, who were residents of the target area of Bellwood, alleged that discriminatory housing practices deprived them of "the social and professional benefits of living in an integrated society." 441 U.S. at 111. The Court noted the allegation was similar to that in *Trafficante*, where it was held that the injury alleged was sufficient to satisfy the constitutional standing requirement of actual or threatened harm. The broad definition of "person aggrieved" under § 810 of the Fair Housing Act was considered a clear indication of Congressional intent to permit liberal standing. The Court considered this to be a part of the scheme of the Act to encourage enforcement by complaints from private persons or "private attorneys general" which are "the main generating force" in "vindicating a policy that Congress considered to be of the highest priority." The 'private attorneys general' role under the Civil Rights Act of 1968 serves not only to protect "those against whom a discrimination is directed but also those whose" daily lives are affected. *Trafficante, Id.* at 209 & 211.

We have neither the power nor the desire to minimize the "case and controversy" requirements of Article III. The modern decisions have not. The constitutional inquiry necessary in confining litigation to proper parties over appropriate disputes remains as generally stated in *Warth* v. *Seldin*, 422 U.S. 490, 498-99 (1974), *citing*, *Baker* v. *Carr*, 369 U.S. 186, 204 (1962)—"whether the plaintiff has 'alleged such a personal stake in the outcome of the

controversy' as to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."

III
ORGANIZATIONAL STANDING

The plaintiff HOME claims its members have been deprived of community advantages by defendants' actions in the same language utilized by Coleman and Willis. HOME therefore has representational standing to litigate these claims on behalf of its members.[4] *Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. 333 (1977), summarizes the requirements of representational standing where the organizational plaintiff has not itself suffered injury:

> [W]e have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

Id. at 343.

See also Warth v. *Seldin*, 422 U.S. at 511 wherein the Court said:

> Even in the absence of injury to itself, an association may have standing solely as the representative of its members. . . . The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit.

[4] It however can not represent its members in individual claims for damages where both the fact and extent of injury would require individualized proof. *Warth* v. *Seldin*, 422 U.S. at 511 & 515-16.

Id. at 511.

The complaint also alleges sufficient injury to HOME as an entity to confer standing on it directly. It claims HOME has been frustrated in its efforts to assist equal access to housing through counseling and other referral services. HOME has devoted significant resources identifying and counteracting the defendants' racially discriminatory steering practices.

This is more than the protestations of general interest found to be insufficient for standing in *Sierra Club* v. *Morton*, 405 U.S. 727 (1972) and *Warth* v. *Seldin, supra*, and by the court of appeals in *Bellwood*, 569 F.2d 1013, 1917 (1978). Although not equaling, it approaches the injury suffered by the nonprofit developer in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp*, 429 U.S. 252 (1977). *See also Park View Heights Corp.* v. *City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972); *Heights Community Congress* v. *Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975). In *Arlington Heights* the Court said:

> MHDC is a nonprofit corporation. Its interest in building Lincoln Green stems not from a desire for economic gain, but rather from an interest in making suitable low-cost housing available in areas where such housing is scarce. This is not mere abstract concern about a problem of general interest. See *Sierra Club* v. *Morton, supra*, at 739. The specific project MHDC intends to build, whether or not it will generate profits, provides that "essential dimension of specificity" that informs judicial decisionmaking. *Schlesinger* v. *Reservists to Stop the War*, 418 U.S. 208, 221 (1974).

Id. at 263.

Although HOME's goals cannot be equated with bricks and mortar, they are functional, requiring identifiable action and the expenditure of effort and funds which may result in

success or failure in achieving its objectives. Its "projects" therefore "provides that 'essential dimension of specificity' that informs judicial decision making," as described in *Arlington Heights.*

IV
THE TARGET AREA

The defendants in oral argument contended that the City of Richmond or Henrico County is too large[5] as a matter of law to comprise a "target area" of housing discrimination. The "target area" in *Trafficante* was an apartment complex of 8,200 tenants, while the population of Bellwood in which the target neighborhood was located was estimated at 20,969. *Gladstone, Realtors* v. *Bellwood, Id.* at 113 n. 27. As the Court said in *Bellwood,* however:

> The constitutional limits of respondents' standing to protest the intentional segregation of their community do not vary simply because that community is defined in terms of city blocks rather than apartment buildings. Rather, they are determined by the presence or absence of a "distinct and palpable injury," *Warth* v. *Seldin,* 422 U.S., at 501, to respondents resulting from petitioners' conduct. A "neighborhood" whose racial composition allegedly is being manipulated may be so extensive in area, so heavily or even so sparsely populated, or so lacking in shared social and commercial intercourse that there would be no actual injury to a particular resident. The presence of a genuine injury should be ascertainable on the basis of discrete facts presented at trial. (Footnote omitted).

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[5] The population of the City of Richmond is 219,883 while that of Henrico County, Virginia is 172,922. Department of Commerce, Bureau of Census, Current Population Reports, Special Census of the Richmond, Virginia areas, April 4, 1978, p. 1, published August, 1979.

Id. at 114.

The district court's dismissal prevented plaintiffs Coleman, Willis, and HOME from proceeding to trial. Since allegations bearing on standing must be actualized by proof, the defendants may, on remand, contest these as any other facts. The complaint in the instant case does not specifically allege that the discrimination practiced at Colonial Courts and Camelot Townhouse Apartments affect the area where the testers reside. The district court may require the complaint to be amended for such allegation necessary to facilitate production of evidence bearing on this issue. If the allegations are not supported by proof at trial, the case may be terminated for lack of standing at an appropriate stage of the trial. *Id.* at 115 n. 31.

V

STATUTE OF LIMITATION

The defendants contend and the district court held that all the alleged Fair Housing Act violations except the one of July 13, 1978, involving Coles are time-barred by the statute of limitation contained in 42 U.S.C. § 3612(a). The applicable part of that statute states simply: "a civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred."

It is conceded that each of the specific acts of the defendants except the one of July 13 transpired more than 180 days before the complaint was filed. The defendants contend that each discrete act constitutes an "occurrence" and an action is barred as to each specific act after 180 days. The plaintiffs contend that the "occurrence" is the defendant's continuing practice of racial steering and that the 180 days commences with the last act—in this case the violation of July 13. We agree with the plaintiffs and hold that none of

the allegations in the complaint are time-barred by the 180-day provision.

Hickman v. *Fincher*, 483 F.2d 855 (4th Cir. 1973), affirmed a district court ruling that barred an action commenced more than 180 days after the last act of discrimination. *Hickman*, however, is not dispositive because there was no allegation of a continuing violation or a pattern of violations.

There is an appealing simplicity equating "occurrence" to a discrete act. Not simple, however, are the social ills targeted by Congress nor the actions of putative landlords. It is not isolated instances of discrimination that are the primary focus of the statute—rather it is a generalized practice of housing discrimination.

The Court of Appeals for the Seventh Circuit considered a similar contention in *Baker* v. *F & F Investment*, 420 F.2d 1191 (7th Cir. 1970). Negro purchasers of real estate on installment contracts alleged they were burdened with discriminatory prices and terms. The defendants there argued that they had performed only a single action—the execution of the contract—and that this was time-barred. The court disagreed, holding the violations continued during the lives of the contracts:

> Plaintiffs have alleged wrongs committed by defendants which continue during the entire lives of the individual purchase contracts. They have alleged a conspiracy among defendants, the object of which was the establishment of a continuing relationship with individual plaintiffs. . . . Because of the continuing nature of the overt acts alleged, the statutes of limitations do not commence to run when the contracts were executed but when they terminate.
>
> . . . .
>
> [T]he touchstone of our inquiry must be the nature and

> extent of defendants' behavior, not the duration of plaintiff's injury.

Id. at 1200 (Citation omitted).

See Cedeck v. *Hamiltonian Federal Savings & Loan Association*, 551 F.2d 1136 (8th Cir. 1977) and *Macklin* v. *Spector Freight Systems, Inc.*, 478 F.2d 979 (D.C. Cir. 1973). See also *Fair Housing Council of Bergen County, Inc.* v. *Eastern Bergen County Multiple Listing Service, Inc.*, 422 F.Supp. 1071, 1078 (D.N.J. 1976) where the New Jersey District Court said, in considering the § 3612(a) time limitation:

> Congress obviously included such a provision to prevent the district courts from being used to exhume stale grievances. No such considerations apply to the case at bar. Plaintiffs have alleged what amounts to a continuing conspiratorial practice on the part of multiple, influential defendants. Taking the complaint as true, as is required at this early juncture, plaintiffs' grievance is anything but stale. It is fresh and immediate.

See Stingley v. *City of Lincoln Park*, 429 F.Supp. 1379 (E.D. Mich. 1977).

The Sixth Circuit in *Hunter* v. *Atchinson*, 466 F.2d 490 (6th Cir. 1972), held that the facts of a given case would determine whether the language of § 3612(a) means the statute runs from the first or the last of the discriminatory acts. That opinion reversed the district court's dismissal and remanded for an evidentiary hearing noting "[t]his case may ultimately require us to construe the Congressional purpose involved in the limitation. . . ." *Id.* at 491.

There is no reason to differentiate the purpose of the § 3412(a) statute of limitation from general statutes barring litigation after a lapse of time. Lawmakers protect

litigants from perpetual threats of lawsuits and protect the integrity of enlightened fact finding. These policies do not militate against our holding. The instant controversy was continuing—the evidence easily obtainable. It is not unfair to require these defendants to litigate the matter when they were, according to the complaint, acutely aware of their continuing activities. Coles, Coleman, Willis and HOME were involved in active, consecutive, connected, and continuing attempts to secure or determine compliance with the Fair Housing Act. The defendants, just as resolutely, continued their practice of prohibited discrimination against these specific individuals. This, under the circumstances, is a continued relationship between the defendants and the plaintiffs and a continued violation of § 3604 so that the violations continued to "occur" until the last act of July 13, 1978. By the very nature of these offenses, "occurrence" must be thus construed to effect the remedial purposes of the act.

Reversed and Remanded.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

PAUL ALLEN COLES,
et al

v.

HAVENS REALTY CORPORATION,
et al

Civil Action No. 79-0024-R

ORDER

In accordance with the memorandum this day filed, the claims of plaintiffs Sylvia Coleman, R. Kent Willis, and Housing Opportunities Made Equal are hereby DISMISSED for failure to state a claim on which relief may be granted. In all other respects, defendants' motion to dismiss filed 31 January 1979 is hereby DENIED.

Let the Clerk send a copy of this order and memorandum to all counsel fo [sic] record.

/s/ D. DORTCH WARRINER
United States District Judge

Date: 16 February, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

PAUL ALLEN COLES,
et al

v.

HAVENS REALTY CORPORATION,
et al

Civil Action No. 79-0024-R

MEMORANDUM

This matter is before the Court on defendants' motion to dismiss of 31 January 1979. The time allotted by the Local Rules for plaintiffs' reply to this motion has expired, and plaintiffs have not responded by memorandum or otherwise. Accordingly, the motion is now ripe for disposition. The defendants' motion has several parts, each of which will be considered separately.

Defendants state that all of plaintiffs' claims but one are based on acts of discrimination which occurred more than 180 days before the filing of the complaint in this case. Accordingly, defendants argue, all claims under the Fair Housing Act of 1968 except that based on the alleged discriminatory act on 13 July 1978 are barred by the applicable statute of limitations, 42 U.S.C. § 3612(a). This claim is well taken, and the action will be dismissed as to all barred claims. The Court notes that none of plaintiffs' claims are time-barred under the two-year statute of limitations applicable to 42 U.S.C. § 1982.

Defendants argue that the corporate plaintiff, Housing Opportunities Made Equal (HOME) is not a proper party plaintiff to this law suit. The Court believes that the law is clear that HOME is not a proper party to this action and cannot be accorded any relief by this Court. *Warth* v. *Seldin*, 422 U.S. 490 (1975); *TOPIC* v. *Circle Realty*, 532 F.2d 1273 (9th Cir. 1976). Accordingly HOME will be dismissed as a party plaintiff.

Defendants claim that the "tester" plaintiffs (Coleman and Willis), the persons who allegedly sought to rent from defendants in order to prove a pattern of discrimination, have suffered no injury and thus are entitled to no relief. Plaintiffs' complaint makes it clear that Coleman and Willis did not attempt in good faith to rent residential property from any defendant, but instead sought only to develop evidence for use in this law suit. Their action seeks to vindicate the rights of third parties, dispite [sic] their allegation of deprivation of benefits from interracial associations. In asserting the claim based on these deprivations, Coleman and Willis assert no more than the general public interest. Furthermore, there is no allegation that absent the defendants' discriminatory practices, Coleman and Willis would reside in integrated communities. Thus, Coleman and Willis must be dismissed as parties plaintiff.

Defendants argue that none of the plaintiffs allege that they actually offered to rent an apartment from any defendant, and thus may not maintain an action or denial of rental housing. However, the gravamen of plaintiffs' complaint is that when black persons inquired as to vacancies, they were told that none existed. Under these circumstances, no affirmative offer to rent need be shown in order to state a claim.

Defendants suggest that Coleman, Willis, and HOME are

not proper class representatives. The Court's ruling that these plaintiffs' claims be dismissed make it unnecessary to consider this claim. However, the Court does not agree that plaintiff Coles cannot represent a class merely because his claim is based on a single individual act of discrimination. Further, while plaintiffs' failure to file their complaint herein until some claims had been time-barred—and their failure to respond to defendants' motion and brief—are indications that plaintiffs may not adequately represent the interest of the class, these matters are ones for the Court to consider on a motion for class certification after there has been an opportunity for discovery of the question of class certification to determine the factual questions raised by defendants' contentions.

An appropriate order shall issue.

/s/ D. DORTCH WARRINER
United States District Judge

Date: 16 February 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

PAUL ALLEN COLES, et al

v.

HAVENS REALTY CORPORATION, et al

Civil Action No. 79-0024-R

ORDER

As is made clear by Local Rule 11(F) and (P), applications for extensions of time are granted by the Court, not by opposing counsel. Accordingly, the motion of plaintiffs Coleman, Willis, and Housing Opportunities Made Equal to reconsider, filed herein on 16 February 1979, is DENIED and the brief tendered on 20 February 1979, and mistakenly marked "filed" by the Clerk, will not be considered.

And it is so ORDERED.

Let the Clerk send a copy of this order to all counsel of record.

/s/ D. DORTCH WARRINER
United States District Judge

Date: 22 February 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN,
R. KENT WILLIS, and on behalf of all others
similarly situated, and
HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation,

Plaintiffs,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation,
and
ROSE JONES,

Defendants.

Civil Action No. 79-0024-R

ORDER FOR FINAL JUDGMENT

On the prior Order of this Court, dated and entered February 16, 1979, it appearing to the Court that there is no just reason for delay in entering final judgment on Defendants' Motion to Dismiss the Claims of plaintiffs, Sylvia Coleman, R. Kent Willis and Housing Opportunities Made Equal it is, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure,

ORDERED that a final judgment be entered herein that the claims of these plaintiffs are dismissed.

/s/ D. DORTCH WARRINER
United States District Judge

Date 6 March 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN,
R. KENT WILLIS, and on behalf of all others
similarly situated, and
HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation,

Plaintiffs,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation,
and
ROSE JONES,

Defendants.

Civil Action No. 79-0024

COMPLAINT

(For Declaratory Judgment, Damages and Injunctive Relief)

1. This is an action for a declaratory judgment, damages and injunctive relief to redress the deprivation of rights, privileges and immunities of the plaintiffs, and all other members of the class they represent, from the acts, patterns, practices and policies of the defendants that restrain, limit, classify, segregate and otherwise discriminate on the basis of race or color, in the rental of residential housing units in Henrico County, Virginia. This action involves the pattern and practices of defendants of denying housing on the basis of race and of racial steering, a practice by which real

estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups, a practice in violation of the statutes set forth herein. This action arises under 42 U.S.C. §3601 and §3604 (the Fair Housing Act of 1968), and 42 U.S.C. §1982 (the Civil Rights Act of 1866). This Court has jurisdiction of this action under 42 U.S.C. §3612(a), 28 U.S.C. §§1331, 1337, 1343(4) and 2201.

2. The individual plaintiffs are members of a class composed of all persons who have rented or sought to rent residential property in Henrico County, Virginia, and who have been, or continue to be, adversely affected by the acts, policies and practices of defendants complained of herein.

3. The number of persons in the class represented by the individual plaintiffs ("plaintiff class") is so numerous that joinder of all members is impracticable.

4. There are questions of law and fact common to the plaintiff class. These questions include, among others, whether or not the practices engaged in by defendants in Henrico County deprive the members of the plaintiff class of civil rights secured to them by the Fair Housing Act of 1968 and the Civil Rights Act of 1866. The method by which the defendants violate these statutes and engage in the practice of racial steering is one of the questions of fact common to the plaintiff class.

5. The claims of the representative plaintiffs are typical of the claims of the plaintiff class. The representative plaintiffs will fairly and adequately protect the interests of the

plaintiff class because their interests and those of the plaintiff class are coextensive. Counsel for the representative plaintiffs are capable of conducting the litigation commenced by the filing of this complaint.

6. Defendants have acted or refused to act on grounds generally applicable to the plaintiff class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the plaintiff class as a whole.

7. The individual plaintiffs to this action are all residents of the City of Richmond or Henrico County and have been injured by the discriminatory acts of the defendants. Plaintiff Paul Allen Coles is a black man who has attempted to rent residential property from the defendants ("renter plaintiff"). The remaining individually-named plaintiffs, Sylvia Coleman, a black woman, and R. Kent Willis, a white man ("tester plaintiffs"), have consulted defendants with regard to available rentals in the course of their employment with Housing Opportunities Made Equal to determine whether or not defendants have practiced racial steering in the rental housing market.

8. Housing Opportunities Made Equal ("HOME") is a nonprofit corporation organized under the laws of the State of Virginia with its principal place of business at 503 East Main Street, Richmond, Virginia, 23219. Its purpose is to make equal opportunity in housing a reality in the Richmond Metropolitan Area. Its membership is multiracial and includes approximately 600 individuals. Its goals include the elimination of unlawful racially discriminatory housing practices that cause injury to its members, to all persons who seek to rent apartment units in the Metropolitan Area and to all persons who reside in the Metropolitan Area. HOME seeks to assure to all such persons the right to the important social, professional, business, eco-

nomic and political benefits of interracial associations that arise from living in integrated communities. The activities in which HOME engages includes [sic], but are not limited to, the following:

(a) Seeking to assist and aid individuals of all races in obtaining housing throughout the Richmond Metropolitan Area, through the operation of a housing counselling [sic] service;

(b) Investigating allegations of discrimination and referring complaints to appropriate state and federal agencies;

(c) Conducting independent investigations of real estate brokers located in the Richmond Metropolitan Area to determine whether equal opportunity in housing is available, and taking such steps as it may deem necessary to assure such equal opportunity and to eliminate racially discriminatory housing practices.

9. Defendant Havens Realty Corporation is a Virginia Corporation with its principal place of business at Camelot Townhouses and Colonial Court Apartments, 9108-A Quioccasin Road in Henrico County, Virginia. At all times relevant to this action, Havens Realty Corporation has been engaged in the business of real estate brokerage services as to apartment rental units in Richmond. Defendant Rose Jones is an employee of Havens Realty Corporation.

10. Like other metropolitan areas throughout the United States, the Richmond Metropolitan Area, including Henrico County, has been marked by racially segregated residential housing patterns. Neighborhoods have reflected the impact of segregation resulting from the actions of private individuals and groups, restrictive covenants, zoning and other factors, so that area neighborhoods can generally be identified as "white" or "black" neighborhoods. The practice or [sic] "racial steering" engaged in by these defendants, contributes to maintaining existing neighborhood segregation

and inhibits the development of stable racially integrated neighborhoods.

11. Defendants treat differently white and non-white prospective lessees on the basis of race or color. Defendants have engaged in practices to the detriment and injury of the plaintiffs herein and others similarly situated by consistently showing only prospective white customers ("customers") rental units in a building occupied primarily by white tenants, by consistently refusing or failing to show black customers ("customers") rental units in the aforementioned building occupied primarily by white tenants, notwithstanding the "listings" for rentals in that building that fall within the category of housing sought by such black customers, and on occasion by failing or refusing to show prospective black customers rental units in a less racially segregated building or by showing such prospective black customers only rental units in the less racially segregated building.

12. The patterns, practices, acts and policies of defendants, as hereinabove alleged, in restraining, limiting, classifying, segregating and otherwise discriminating on the basis of race or color in the rental of residential real estate in Henrico County, and in the rendition of real estate brokerage services in connection therewith, have caused injury to the plaintiff class. Renter plaintiff Coles has been denied the right to rent real property in a predominantly white-occupied building in Henrico County in violation of the 1866 Civil Rights Act, 42 U.S.C. §1982 and the Fair Housing Act of 1968, 42 U.S.C. §3604, in the following manner: On July 13, 1978, plaintiff Coles visited the office of Havens Realty Corporation located at the Camelot Townhouses to inquire into available apartments at Camelot Townhouses. Camelot Townhouses is an apartment complex predominantly occupied by whites. Coles was informed that no apartments were available in the Camelot complex.

He was told that an apartment was available in the adjoining Colonial Court complex. The Colonial complex is integrated. That same day white tester John Barr telephoned the Havens office and was informed by defendant Rose Jones that an apartment was available in Camelot Townhouses. That same day John Barr visited the Havens office and was informed by Susan Newton, then an employee of Havens, that an apartment was available in the Camelot Townhouses.

13. Defendants have evidenced a pattern, practice and policy of racial steering to the specific injury of tester plaintiff Sylvia Coleman, in the following manner:

(a) On March 14, 1978, black tester Sylvia Coleman asked about vacancies at Colonial Court but was told by the defendant Rose Jones that nothing was available; that same day white tester R. Kent Willis asked about vacancies at Colonial Court and was told by defendant Rose Jones that two apartments were available, both at Colonial Court and Camelot Townhouse apartments;

(b) On March 21, 1978, black tester Sylvia Coleman asked generally about vacancies in apartments in Henrico County but was told by defendant Susan Newton that nothing was available; that same day white tester R. Kent Willis asked about vacancies at apartments in Henrico County and was told by defendant Rose Jones that an apartment was available at Colonial Court;

(c) On March 23, 1978, black tester Sylvia Coleman asked Rose Jones about vacancies in defendant's buildings but was told by employee Susan Newton that nothing was available; that same day white tester R. Kent Willis asked about vacancies in the defendant's apartment complexes and was told by employees Rose Jones and Susan Newton that an apartment was available at Colonial Court;

(d) On July 6, 1978, black tester Sylvia Coleman

asked about vacancies at the Camelot Townhouses complex, but was told that nothing was available at Camelot Townhouses; black tester Coleman was told that there was a vacancy at Colonial Court apartments; that same day white tester John Barr asked about vacancies at Camelot Townhouse apartments and was told an apartment was available at Camelot Townhouse apartments.

14. Renter plaintiff Paul Allen Coles and tester plaintiff Sylvia Coleman have, because of their race, been denied the right to rent real property in Henrico County, Virginia, and therefore have been deprived of the advantages and conveniences they would have enjoyed from living in this area and the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices. These individual plaintiffs and the members of the class they represent have been deprived of the right to live in communities that are not limited, classified or segregated on the basis of race or color, in violation of the Fair Housing Act of 1968, 42 U.S.C. §3601, *et seq.*; and the right to make and enforce contracts for the lease of real estate, in violation of the Civil Rights Act of 1866, 42 U.S.C. §1982.

15. White tester plaintiff R. Kent Willis and the members of the class he represents, have been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices, in violation of the Fair Housing Act of 1968, 42 U.S.C. §3601, *et seq.*

16. Plaintiff HOME has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to

identify and counteract the defendant's racially discriminatory steering practices. HOME members have, as a result of defendants' practices, been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices, in violation of the Fair Housing Act of 1968, 42 U.S.C. §3601, *et seq.*

17. The individual plaintiffs and the class they represent have been subjected to acts, patterns, practices and policies of the defendants, which have created, cultivated and perpetuated a discriminatory "dual" housing market in Henrico County by limiting, classifying and segregating said communities on the basis of race or color, in violation of the Fair Housing Act of 1968, 42 U.S.C. §3601, *et seq.*

18. The plaintiffs have no adequate remedy at law. The individual plaintiffs and the class they represent have suffered, are now suffering and will continue to suffer irreparable harm and injury by the unlawful policies and discriminatory practices of the defendants. The infringement upon the rights of the plaintiffs and the class they represent is grave, immediate and continuing.

WHEREFORE, the plaintiffs pray that this Court enter a judgment:

(a) declaring that defendants' acts, practices and policies complained of herein violate rights secured by the Civil Rights Act of 1866, 42 U.S.C. §1982, and Title VIII of the 1968 Civil Rights Act, 42 U.S.C. §3601, *et seq.;*

(b) enjoining the defendants, their agents, employees, successors, assigns, and those acting in active concert, combination or participation with them, from engaging in policies and practices which deprive plaintiffs and the class they represent of rights secured by 42 U.S.C. §§1982 and 3601, *et seq.*, including, but not limited to, a judgment:

(i) enjoining defendants from refusing or failing to show or rent any housing unit owned or managed by the defendants to any person because of race or color;

(ii) enjoining defendants from steering or channelling any prospective renter toward or away from any particular rental unit, complex or neighborhood on account of race or color;

(iii) enjoining defendants from discriminating against any person in the terms, conditions, or privileges of renting, or in the provision of services in connection therewith; and

(iv) enjoining defendants from representing to any person, because of race or color, that any rental unit is not available for inspection or rental when such unit is in fact so available;

(c) ordering defendants to take affirmative action supervised by this Court, to overcome the effect of their past discriminatory actions, such affirmative action to include, *inter alia*:

(i) the soliciting and encouraging of blacks to rent units in predominantly white communities and whites to rent such units in predominantly black and integrated communities;

(ii) the adequate advertising in appropriate publications and circulation of information concerning apartments available in defendants' files;

(iii) the adoption of a uniform system of rules, regulations, codes, etc., together with enforcement procedures, designed to ensure that defendants' past discriminatory actions are not repeated or continued, including the adoption of a policy of hiring personnel in its real estate office without regard to race; and

(iv) the prompt reporting in written form by defendants of such information as the Court deems necessary to enable the efficient monitoring of the defendants' compliance with

other parts of the Court's order and the Fair Housing Laws of the United States;

(d) awarding to renter plaintiff Paul Allen Coles the sum of $50,000 in actual damages and $100,000 in punitive damages for the violation of his rights by these defendants;

(e) awarding to each of the tester plaintiffs Sylvia Coleman and R. Kent Willis the sum of $1,000 in actual damages and $1,000 in punitive damages;

(f) awarding to HOME its expenses of testing and monitoring defendants' practices and its expenses pursuant to this litigation;

(g) awarding to plaintiffs their costs and reasonable attorney fees in this action; and

(h) granting such additional and further relief as the Court deems just and equitable.

Respectfully submitted,

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42 U.S.C. § 1982

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. § 3613

§ 3613. Enforcement by the Attorney General; issues of general public importance; civil action, Federal jurisdiction; complaint; preventive relief

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.